



4510-29-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

**[Prohibited Transaction Exemption 2019-07; Exemption
Application No. D-11962]**

**Notice of Exemption Involving Credit Suisse Group AG (CSG)
and its Current and Future Affiliates, including Credit
Suisse AG (CSAG) (Collectively, Credit Suisse or the
Applicant), Located in Zurich, Switzerland**

AGENCY: Employee Benefits Security Administration, U.S.
Department of Labor.

ACTION: Notice of individual exemption.

SUMMARY: This document contains an exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice is for the following granted exemption: 2019-07, Credit Suisse AG, D-11962.

DATES: This five-year exemption will be in effect for five years beginning on the expiration of PTE 2015-14.

FOR FURTHER INFORMATION CONTACT: Mrs. Blessed Chuksorji-Keefe of the Department, telephone (202) 693-8567. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: A notice was published in the Federal Register of the pendency before the Department of a proposal to grant this exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. One request for a hearing was received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury

to issue exemptions of the type proposed to the Secretary of Labor.

DISCUSSION

On July 16, 2019, the Department of Labor (the Department) published a notice of proposed exemption in the Federal Register at 84 FR 33966, for certain entities with specified relationships to CSAG (CS Affiliated QPAMs) to continue to rely upon the relief provided by PTE 84-14 for a period of five years,¹ notwithstanding CSAG's criminal conviction, as described herein. The Department is granting this exemption in order to ensure that Covered Plans² whose assets are managed by a CS Affiliated QPAM may continue to benefit from the relief provided by PTE 84-14. The exemption is effective from November 21, 2019 through November 20, 2024 (the Exemption Period).

¹ 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005) and as amended at 75 FR 38837 (July 6, 2010), hereinafter referred to as PTE 84-14 or the QPAM exemption.

² The term "Covered Plan" is a plan subject to Part 4 of Title 1 of ERISA ("ERISA-covered plan") or a plan subject to Section 4975 of the Code ("IRA") with respect to which a CS Affiliated QPAM relies on PTE 84-14, or with respect to which a CS Affiliated QPAM (or any CS affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84-14). A Covered Plan does not include an ERISA-covered Plan or IRA to the extent the CS Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into its contract, arrangement, or agreement with the ERISA-covered plan or IRA.

No relief from a violation of any other law is provided by this exemption, including any criminal conviction described in the proposed exemption, as clarified herein. Furthermore, the Department cautions that the relief in this exemption will terminate immediately if, among other things, an entity within the Credit Suisse corporate structure is convicted of a crime described in Section I(g) of PTE 84-14 (other than the Conviction) during the Exemption Period. The terms of this exemption have been specifically designed to promote conduct that adheres to basic fiduciary standards under ERISA and the Code. The exemption also aims to ensure that plans and IRAs can terminate relationships in an orderly and cost effective fashion in the event a plan or IRA fiduciary determines it is prudent for the plan or IRA to sever its relationship with an entity covered by the exemption.

WRITTEN COMMENTS

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption. All comments and requests for a hearing were due by August 30, 2019. The Department received three comment letters in

response to the proposed exemption.³ One letter did not identify substantive issues. Credit Suisse commented, and requested numerous revisions to the proposed exemption. Three individuals (Dr. Paul Morjanoff, James S. Henry and Andreas Frank) joined together in one letter (the Morjanoff Letter).⁴ In the Morjanoff Letter, the individuals: requested a hearing; commented on Credit Suisse's letter; and requested revisions to the proposed exemption.⁵

After considering these submissions, the Department has determined to grant the proposed exemption, with revisions, as described below.

I. The Credit Suisse Comment Letter:

Credit Suisse Comment 1. Credit Suisse requested that the Department reconsider its decision to impose the exemption's annual audit requirement. Credit Suisse contends: (1) the conviction occurred outside of the CS

³ The letters are summarized below. The commenters' letters are available in their entirety by contacting the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, DC 20210, and referencing Application No. D-11962.

⁴ The letter included a statement that, "Mr. Bartlett Naylor, Senior Financial Policy Advocate, Public Citizen's Congress Watch, also formally requests a hearing." However, Mr. Naylor did not submit any information that validates or supports this request.

⁵ The Department requested that Credit Suisse respond, on the record, to the Morjanoff Letter. Credit Suisse's response may be requested through the Public Disclosure Office in the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, DC 20210, by referencing Application No. D-11962.

Affiliated QPAMs, in an entity that is separate from the asset management business; (2) the audit proposed for the second five-year term of relief is more burdensome than the audit imposed under the existing exemption for the first five-year term; and (3) the exemption's Compliance Officer requirement is a reasonable substitute for a full audit. Credit Suisse represents that it has demonstrated a strong culture of compliance and commitment to addressing the Department's articulated concerns.

Department's Response: The Department is not eliminating the exemption's audit requirement. CSAG, which is the corporate parent of the CS Affiliated QPAMs, knowingly and willfully engaged in serious, substantial, pervasive and decades-long criminal misconduct. The audits required by this exemption are structured to ensure that CS Affiliated QPAMs remain insulated from CSAG and the criminal misconduct that gave rise to the Conviction. Each future annual audit is essential to the Department's determination that, prospectively, this exemption will be in the interest of, and protective of, Covered Plans, and will be administratively feasible, as required by Section 408(a) of ERISA.

Credit Suisse Comment 2. Credit Suisse requests that, if the audit requirement is not eliminated, the Department

revise the certification process for an Audit Report's addendum. In this regard, Section I(i)(5) of the exemption provides, in pertinent part, that the CS Affiliated QPAM must promptly address or prepare a written plan of action to address any determination as to the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective CS Affiliated QPAM. Any action taken or the plan of action to be taken by the respective CS Affiliated QPAM must be included in an addendum to the Audit Report (such addendum must be completed prior to the certification described in Section I(i)(7) below).

Section I(i)(7) of the exemption requires, in relevant part, that a senior executive officer of the CS Affiliated QPAM certify in writing, under penalty of perjury, that the CS Affiliated QPAM addressed, corrected, or remedied any noncompliance and inadequacy, or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report.

Credit Suisse states that "it would be preferable" to require that the addendum be completed as part of the senior executive officer certification process, rather than prior to it. According to Credit Suisse, requiring completion of addenda as part of the certification process

would allow for meaningful, comprehensive input by the certifying officer.

Department's Response: The Department is not making the requested modification. The certification of a completed addendum by a CS executive officer ensures that a senior, knowledgeable corporate officer with relevant experience has reviewed the actual actions taken, or the actual plans of action that will be taken, by the CS Affiliated QPAM, to address any instances of the CS Affiliated QPAM's noncompliance or inadequacy. The Department is not persuaded that certification of actions, or plans of action, that are not finalized provides meaningful protection to Covered Plans. Further, nothing in the exemption precludes a certifying officer from providing meaningful, comprehensive input prior to the finalization of the addendum.

Credit Suisse Comment 3. Section I(i)(8) provides, in part: "The Risk Committee, the Audit Committee, and CSAG's Board of Directors are provided a copy of each Audit Report... and the head of Compliance and the General Counsel must review the Audit Report for each CS Affiliated QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report...."

First, Credit Suisse states that the requirement that

the Audit Report be provided to the Risk Committee, Audit Committee, and Board of Directors is an escalation compared to not only the existing exemption but to prior exemptions for similarly situated applicants. PTE 2015-14 contains no requirement to provide the audit report to a committee of the Board of Directors. Credit Suisse notes that the Department granted exemptions arising from criminal convictions of entities that conspired to manipulate the price of U.S. dollars and euros exchanged in the foreign currency exchange (FX) spot market (the FX exemptions),⁶ and the Audit Reports in those exemptions were required to be provided to either the Risk Committee or the Audit Committee of the entity's Board of Directors (depending on their structure), not both, and not to the full Board.

Second, Credit Suisse requests that the condition be revised to require that an executive officer of Credit Suisse AG must review the Audit Report for each CS Affiliated QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report.

⁶ Citicorp, JPMorgan Chase & Co. and Barclays PLC were criminally convicted for conspiring to manipulate the price of U.S. dollars and euros exchanged in the foreign currency exchange (FX) spot market (the FX convictions). QPAMs related to those entities received five year exemptions (the FX exemptions) allowing them to continue to rely on the relief provided by PTE 84-14, notwithstanding the FX convictions. See PTE 2017-05 (Citicorp), PTE 2017-03 (JPMorgan Chase & Co.) and PTE 2017-06 (Barclays).

Department's Response: The Department is not persuaded that the conditions in this exemption must mirror the conditions in the FX exemptions. First, the Department's individual exemptions and the conditions therein are not precedential. Further, the Department does not view all criminal convictions as analogous when determining whether to grant an individual exemption and how best to protect affected plans and IRAs. Each applicant for an exemption must demonstrate, and the Department must affirmatively find, on the record, that the requested relief is in the interest of, and protective of, affected plans and IRAs, and administratively feasible. Finally, the Department will not fail to impose a condition it believes will enhance the protection of affected plans and IRAs, merely because an earlier exemption does not contain that condition.

It is the Department's understanding that the primary function of Credit Suisse's Risk Committee is to assist the Credit Suisse Group AG Board of Directors in fulfilling its risk management responsibilities as defined by applicable law and regulations as well as Credit Suisse Group AG's articles of association and internal regulations. Additionally, it is the Department's understanding that the primary function of Credit Suisse's Audit Committee is to

assist the Board of Directors in its oversight role by monitoring and assessing the financial statements of Credit Suisse. Given those roles, the Department believes that receipt of the Audit Report by either the Risk Committee or the Audit Committee will provide a meaningful protection to Covered Plans. Consistent with this requirement, the exemption mandates that a senior executive officer of the Risk or Audit Committee that received the Audit Report must review the Audit Report, and must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report.

Credit Suisse Comment 4. Section I(i)(9) requires, in part, that each CS Affiliated QPAM must provide its certified Audit Report to the Department no more than 30 days following the completion of the Audit Report. Credit Suisse requests that the time for delivering the audit report to the Department be extended from 30 days to 45 days.

Department's Response: The Department has revised Section I(i)(9) as requested.

Credit Suisse Comment 5. Credit Suisse requests that relief to the CS Affiliated QPAMs and to Covered Plans not be conditioned upon the independent auditor's cooperation with the Department or disclosure of work papers. In this

regard, Section I(i)(11) provides, in part: "The auditor must provide the Department, upon request, for inspection and review, access to all of the work papers created and used in connection with the audit, provided the access and inspection are otherwise permitted by law...." And Section I(q) provides, in part: "A CS Affiliated QPAM will not fail to meet the terms of this five-year exemption solely because a different CS Affiliated QPAM fails to satisfy a condition for relief described in Sections I(c), (d), (h), (i), (j), (k), (l), (n), and (p); or, if the independent auditor described in Section I(i) fails a provision of the exemption other than the requirement described in Section I(i)(11), provided that such failure did not result from any actions or inactions of CSAG or its affiliates."

Department's Response: The Department is not making the requested revision. The Department expects the CS Affiliated QPAMs and the Independent Auditor will make every effort to ensure that their respective responsibilities under the exemption are fulfilled, and to contact the Office of Exemption Determinations in a timely manner any time guidance is needed. The Department is not aware of any instance where an independent auditor has failed to meet its responsibilities under a QPAM Section I(g) individual exemption.

Credit Suisse Comment 6. Section I(a) of the proposed exemption provides, in part: "For purposes of this exemption, including paragraph (c) below, "participate in" refers not only to active participation in the criminal conduct of CSAG that is the subject of the Conviction, but also to knowing approval of the criminal conduct, or knowledge of such conduct without taking active steps to prohibit such conduct, including reporting the conduct to such individual's supervisors, and to the Board of Directors. In this regard, unless the individual reasonably believed that his or her initial report was given an appropriate response within a reasonable time, the individual must further report the criminal conduct to the person or persons the individual reasonably expected would carry out the appropriate response."

Credit Suisse requests that this condition be replaced with the language in the FX exemptions. No prior exemption has contained a requirement that an individual determine whether his or her initial report of criminal conduct was appropriately addressed, and Credit Suisse submits that this requirement is not necessary to protect Covered Plans, and the requirement is inherently problematic. According to Credit Suisse, instead of reflecting a state of affairs that existed at the time of the criminal conduct, the

condition appears to be prospective in that it requires further action by any individual with knowledge of the criminal conduct. Credit Suisse states that even the parallel conditions in the exemptions granted to BNP Paribas in May 2018 and to UBS in February 2019, both for third convictions, applied only to the criminal conduct at issue and did not contain a prospective component. Credit Suisse performed the diligence required by the Department under the existing exemption. Credit Suisse states that the requirement is unjust and, with the significant passage of time, potentially impossible, to now require the investigation and diligence required by this provision.

Credit Suisse additionally argues that the condition as written involves a subjective assessment of the state of mind of the reporting individual at the time of the criminal conduct. According to Credit Suisse, this analysis requires the Applicant to speculate about what an individual may have been thinking, which is nearly impossible to comply with or confirm, especially five years removed from the criminal conduct.

The applicant also complains that the term "reasonably" is used three times and is not defined, resulting in a further lack of clarity as to whether and how this condition could be satisfied. Credit Suisse

submits that this condition is not practically enforceable and that there is no need to deviate from the objective conditions used in the FX exemptions.

Department's Response: The Department is revising the exemption in part in response to the Credit Suisse request. The condition, as written, is consistent with an essential premise of the QPAM class exemption: that the QPAM, and those persons and entities that control the QPAM, act with integrity. The condition, as written, is also consistent with representations by Credit Suisse: that the criminal misconduct did not occur within any CS Affiliated QPAM. The Department carefully considered those representations when structuring the protective conditions of PTE 2015-14 and this exemption. The Department expects that each CS Affiliated QPAM will use every effort to ensure that this condition is met throughout the duration of the exemption. The Department is revising the condition by removing the last sentence of Section I(a) beginning with "In this regard..." as requested by Credit Suisse.

Credit Suisse Comment 7. Section I(d) of the proposed exemption provides, in part: At all times during the Exemption Period, a CS Affiliated QPAM will not use its authority or influence to direct an "investment fund" (as defined in Section VI(b) of PTE 84-14) that is subject to

ERISA or the Code and managed by such CS Affiliated QPAM with respect to one or more Covered Plans, to enter into any transaction with CSAG or to engage CSAG to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption. A Credit Suisse Affiliated QPAM will not fail this condition solely because:

(1) A CSAG affiliate serves as a local sub-custodian that is selected by an unaffiliated global custodian that, in turn, is selected by someone other than a CS Affiliated QPAM or CS Related QPAM;

(2) CSAG provides only necessary, non-investment, non-fiduciary services that support the operations of CS Affiliated QPAMs, at the CS Affiliated QPAM's own expense, and the Covered Plan is not required to pay any additional fee beyond its agreed-to asset management fee. This exception does not permit CSAG or its branches to provide any service to an investment fund managed by a CS Affiliated QPAM or CS Related QPAM; or

(3) CSAG employees are double-hatted, seconded, supervised, or subject to the control of a CS Affiliated

QPAM.

First, regarding Section I(d)(1), Credit Suisse states: "the formulation here is not practically workable and must be revised. Although Section I(d)(1) allows a CSAG affiliate to serve as a local sub-custodian, this condition does not benefit the Covered Plan clients of Credit Suisse because only the Bank and its branches – not an affiliate – currently serve as local sub-custodians for the four largest plan global custodians. While in some markets, it might be possible for a global custodian to select an affiliate or subsidiary of a bank, that situation is very rare."

Department's Response: The Department is not revising Section I(d)(1). The criminal wrong-doing that is the subject of the Conviction was committed by CSAG, and the charging documents cite participation by CSAG subsidiaries. In this regard, as noted in the proposed exemption, on May 19, 2014, in the U.S. District Court for the Eastern District of Virginia (the District Court),⁷ the U.S. Department of Justice charged CSAG with, and CSAG pled guilty to, one criminal count of conspiracy to violate Code

⁷ *United States of America v. Credit Suisse AG*, Case Number 1:14-cr-188-RBS.

section 7206(2).⁸ The charging documents cited Credit Suisse and its subsidiaries, Credit Suisse Fides and Clariden Leu Ltd., for willfully aiding, assisting in, procuring, counseling, and advising the preparation and presentation of false income tax returns and other documents to the Internal Revenue Service of the Treasury Department (IRS), for decades, prior to and through approximately 2009. On May 19, 2014, pursuant to a plea agreement, CSAG entered a guilty plea for assisting U.S. citizens in federal income tax evasion. On November 21, 2014, the District Court entered a judgment of conviction against CSAG.

Credit Suisse has not adequately demonstrated that permitting CSAG and its subsidiaries and branches to participate in the sub-custody transactions described in Section I(d)(1) of the exemption would be in the interest of, and protective of, affected Covered Plans.

Second, regarding Section I(d)(2), Credit Suisse states: the condition should be clarified to permit CSAG to provide support services to the CS Affiliated QPAMs regardless of whether such support also benefits an

⁸ Section 7206(2) of the Code prohibits willfully aiding, assisting, procuring, counseling, or advising the preparation or presentation of false income tax returns. Section 371 of Title 18 of the United States Code generally prohibits two or more persons from conspiring either to commit any offense against the United States or to defraud the United States.

investment fund managed by a QPAM, as long as the Covered Plan pays no additional fee. According to Credit Suisse, the condition, as written, creates confusion in any situation where CSAG may provide services to the CS Affiliated QPAMs because of the prohibition on services to investment funds managed by the QPAMs.

Department's Response: The Department is not revising the condition. Credit Suisse has not demonstrated that the condition creates confusion. In the Department's view, the condition is clear and unambiguous: CSAG may only provide necessary, non-investment, non-fiduciary services that support the operations of CS Affiliated QPAMs, at the CS Affiliated QPAM's own expense. Further, the Department notes that if it is unclear whether a particular arrangement or situation satisfies a term in the exemption, the CS Affiliated QPAM should resolve the ambiguity in light of the exemption's protective purposes. To the extent additional clarification is necessary, persons or entities should contact EBSA's Office of Exemption Determinations, at 202-693-8540.

Credit Suisse Comment 8. Section I(1) of the proposed exemption provides, in part: "The CS Affiliated QPAM must comply with each condition of PTE 84-14, as amended, with the sole exception of the violation of Section I(g) of PTE

84-14 that is attributable to the Conviction. If, during the Exemption Period, an entity within the Credit Suisse corporate structure is convicted of a crime described in Section I(g) of PTE 84-14, (other than the Conviction), including a conviction in a foreign jurisdiction for a crime described in Section I(g) of PTE 84-14, relief in this exemption would terminate immediately."

Credit Suisse requests that the Department "reconsider its additional condition that a conviction in a foreign jurisdiction automatically would disqualify Credit Suisse from relief under Section I(g) of PTE 84-14 and under this individual exemption, as stated in Section I(l)." Credit Suisse submits that, should the Department include the condition in Section I(l) for Credit Suisse and later reconsider its view, the CS Affiliated QPAMs would be treated differently from similarly situated applicants and the regulated community as a whole.

Department's Response: The Department has removed the condition's reference to foreign convictions. This revision should not be interpreted, however, as the Department's affirmation that a violation of Section I(g) of PTE 84-14 does not occur when a person or entity is convicted in a foreign jurisdiction for a crime described

in Section I(g) of PTE 84-14.

Credit Suisse Comment 9. Credit Suisse requests three revisions to Sections I(a) and I(b) of the proposed exemption. Section I(a) provides, in relevant part: "The CS Affiliated QPAMs (including their officers, directors, agents other than CSAG, employees of such QPAMs, and CSAG employees described in subparagraph (d) above) did not know of, have reason to know of, or participate in the criminal conduct of CSAG that is the subject of the Conviction...."

Section I(b) of the proposed exemption provides: "The CS Affiliated QPAMs and the CS Related QPAMs (including their officers, directors, agents other than CSAG, employees of such QPAMs, and CSAG employees described in subparagraph (d) above) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct of CSAG that is the subject of the Conviction."

First, Credit Suisse requests that the Department qualify that the conditions apply only to employees of the CS Affiliated and Related QPAMs who had responsibility for or exercised authority in connection with the management of plan assets. Credit Suisse states that comparable sections in the FX exemptions covered only QPAM employees "who had responsibility for, or exercised authority in connection

with the management of plan assets."

Second, Credit Suisse states that the phrase "or knowingly receive indirect compensation" implicates the same problems as the definition of "participated in," described above. Credit Suisse states that it performed the diligence required by the Department under the existing exemption, and it is potentially impossible, given the passage of time, to perform the investigation and diligence required by this provision.

Third, Credit Suisse requests that the Department clarify that references to CSAG employees described in subparagraph (d) of the proposed exemption, is intended to refer only to subparagraph (d) (3).

Department's Response: The Department is not making the first two requested revisions. The FX convictions involve criminal misconduct that occurred within non-asset management divisions of certain entities that acted as QPAMs. Consistent with those facts, Section I(a) of each FX exemption precludes relief if a QPAM's asset management division employs an individual who knew of the misconduct, had reason to know of the misconduct, or who participated in the relevant FX criminal misconduct. Also consistent with those facts, Section I(b) of each FX exemption precludes relief if an employee in a QPAM's asset

management division received direct compensation or knowingly received indirect compensation from participating in the criminal conduct that gave rise to the relevant FX conviction.

It is the Department's understanding, consistent with Credit Suisse's representations, that the CSAG Conviction arose from criminal misconduct that occurred outside any CS Affiliated QPAM. No CS Affiliated QPAM employee (asset management or otherwise) knew of, had reason to know of, or participated in, the criminal misconduct that gave rise to the CSAG Conviction. Section I(a) and Section I(b) of the exemption are structured consistent with both the record and with Credit Suisse's representations. Credit Suisse has not demonstrated that it would be in the interest of Covered Plans if individuals who participated in, or were compensated from, the CSAG criminal misconduct were permitted to work in a non-asset management division of a CS Affiliated QPAM.

Regarding Credit Suisse's comment regarding the difficulty a CS Affiliated QPAM may have in complying with these conditions, the Department expects that each CS Affiliated QPAM will use every effort to ensure that the conditions are complied with throughout the duration of the exemption.

Credit Suisse's third requested revision is consistent with the Department's intent, and the Department has made the requested revision.

Credit Suisse Comment 10. Section I(f) provides: "A CS Affiliated QPAM or a CS Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: further criminal conduct that is the subject of the Conviction; or cause the CS Affiliated QPAM or CS Related QPAM, its affiliates, or related parties to directly or indirectly profit from the criminal conduct that is the subject of the Conviction."

Credit Suisse requests that the term "related parties" be removed from this condition. Credit Suisse states that the term is undefined and should be removed.

For clarity, the Department is removing the term "related parties."

Credit Suisse Comment 11. Section I(h)(1) provides, in pertinent part: "Each CS Affiliated QPAM must continue to maintain, adjust (to the extent necessary) or immediately implement and follow written policies and procedures (the Policies). The Policies must require and be reasonably designed to ensure that:

(i) The asset management decisions of the CS Affiliated QPAMs are conducted independently of CSAG's corporate management and business activities, and without considering any fee a CS-related local sub-custodian may receive from those decisions. This condition does not preclude a CS Affiliated QPAM from receiving publicly available research and other widely available information from a CSAG affiliate;

. . .

(vi) The CS Affiliated QPAM complies with the terms of this five-year exemption, and CSAG complies with the terms of Section I(d)(2)."

First, Credit Suisse states that the phrase "or immediately implement" should be deleted. "Immediately" is not defined, and in Credit Suisse's view, it is unrealistic for the CS Affiliated QPAMs to "immediately implement" the policies required under the exemption. Credit Suisse requests that the Department revise the condition, such that each CS Affiliated QPAM must continue to maintain and follow or, within six (6) months of the effective date of this exemption, adjust (to the extent necessary) and implement written policies.

Department's Response: Credit Suisse has not demonstrated or supported its contention that it would be

"unrealistic" for the CS Affiliated QPAMs to "immediately implement" the policies required by the exemption.

However, the Department believes that Covered Plans would be adequately protected if the CS Affiliated QPAMs continue to follow and maintain policies the Policies required by PTE 2015-14 for six months following the effective date of this exemption (i.e., until May 20, 2020). Notwithstanding this, the Department notes that the policies required by PTE 2015-14 do not cover transactions or arrangements described in Section I(d) of this exemption. Therefore, the Department is revising Section I(h)(1), which now begins as follows: Prior to May 21, 2020, a CS Affiliated QPAM may continue to maintain, follow and implement the policies described in Section I(h)(1) of PTE 2015-14. Otherwise, each CS Affiliated QPAM must maintain, adjust (to the extent necessary), implement, and follow the written policies and procedures described below (the Policies). Notwithstanding the preceding sentence, a CS Affiliated QPAM may not engage in any transaction or arrangement described in Section I(d)(1) through (3) of this exemption prior to the date the Policies have been developed, implemented and followed.

Second, Credit Suisse notes that Section I(h)(1)(i) includes the additional prohibition that asset management

decisions are made "without considering any fee a CS-related local sub-custodian may receive from those decisions." Credit Suisse states that the scope of this condition is unclear by virtue of the ambiguous word "considering..." Credit Suisse requests that the Department substitute the following language: "without putting the fact of any fee a CS-related local sub-custodian may receive before the interest of the plan client."

Department's Response: The Department is not revising the condition. Credit Suisse has not demonstrated why the term "considering" is ambiguous. As written, the condition makes it clear that the Policies must require and be reasonably designed to ensure that the CS Affiliated QPAM's asset management decisions do not take into account the fee a CS-related local sub-custodian may receive from those decisions.

Third, Credit Suisse states that the second clause of Section I(h)(1)(vi) "is impracticable for the reasons [Credit Suisse raised] in connection with Section I(d)(2)."

Department's Response: The Department is not revising the second clause of Section I(h)(1)(vi) for the same reasons the Department expressed in response to Credit Suisse's request to revise Section I(d)(2).

Credit Suisse Comment 12. Section I(h)(2) provides:

"Any violation of, or failure to comply with, an item in subparagraphs (h)(1)(ii) through (vi) of this section, is corrected as soon as reasonably possible upon discovery, or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon discovery of such failure to so correct, in writing, to appropriate corporate officers, the head of Compliance and the General Counsel (or their functional equivalent) of the relevant CS Affiliated QPAM, and the independent auditor responsible for reviewing compliance with the Policies. A CS Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this paragraph (2)."

Credit Suisse states that the notification requirements of this condition are unclear by virtue of the phrase "appropriate corporate officers." Credit Suisse suggests instead that subsection (h)(2) read as follows: "Any violation of, or failure to comply with, an item in

subparagraphs (h)(1)(ii) through (vi) of this section, is corrected as soon as reasonably possible upon discovery, or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon discovery of such failure to so correct, in writing, to the head of Compliance and the General Counsel (or their functional equivalent) of the relevant CS Affiliated QPAM, and the independent auditor responsible for reviewing compliance with the Policies. A CS Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after the QPAM reasonably should have known of the noncompliance (whichever is earlier), or provided that it adheres to the reporting requirements set forth in this paragraph (2), if applicable."

Department's Response: The Department is removing the condition's reference to "appropriate corporate officers." However, the Department is not making Credit Suisse's remaining requested revisions. Credit Suisse has not demonstrated why a CS Affiliated QPAM should not be treated as having failed to develop, implement, maintain or follow

the Policies merely because it adheres to the condition's reporting requirements.

Credit Suisse Comment 13. Section I(h)(3) provides, in part: "Each CS Affiliated QPAM must maintain, adjust (to the extent necessary), and implement a program of training (the Training), conducted at least annually, for all relevant CS Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must:

. . .

(ii) Be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code."

Credit Suisse requests confirmation that the training may be conducted electronically or via a website. In addition, Credit Suisse requests a period of six (6) months from the effective date of the exemption to adjust and implement training as necessary.

Department's Response: The Department declines to incorporate the Applicant's requested language regarding the use of electronic or web-based methods in conducting the Training. Further, the training required by this exemption is substantially similar to the training required by PTE 2015-14, and Credit Suisse has not demonstrated the

need to delay the training required by this exemption for six months. Given the importance of this condition, the Department is not revising the condition to allow the six month adjustment/implementation period sought by Credit Suisse.

Credit Suisse Comment 14. Section I(k)(1) provides: "Each CS Affiliated QPAM provides a notice of the five-year exemption, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84-14, to each sponsor and beneficial owner of a Covered Plan that entered into a written asset or investment management agreement with a CS Affiliated QPAM, or the sponsor of an investment fund in any case where a CS Affiliated QPAM acts as a sub-adviser to the investment fund in which such ERISA-covered plan and IRA invests. The notice, Summary and Statement must be provided prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the CS Affiliated QPAM. If this five-year exemption is granted, the clients must receive a Federal Register copy of the notice of final five-year exemption within sixty (60) days of its

publication in the Federal Register. The notice may be delivered electronically (including by an email that has a link to the five-year exemption)."

Credit Suisse requests that the sixty-day period to provide notice of the final exemption run from the effective date, rather than the date of publication in the Federal Register.

Department's Response. The Department has revised the condition as requested.

Credit Suisse Comment 15. Section I(m)(1) provides: "By May 20, 2020, CSAG designates a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct an annual review for each twelve month period, beginning on November 21, 2019, (the Annual Review) to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

. . .

(ii) The Compliance Officer must have a direct reporting line to the highest ranking corporate officer in charge of compliance for asset management."

Credit Suisse requests that the condition be changed

to require a CS Affiliated QPAM, rather than the parent company, to designate the senior compliance officer. In addition, Credit Suisse requests that the Department clarify that each relevant line of business may designate its own compliance officer. Finally, Credit Suisse requests clarification that the designated compliance officer report to (or be) the highest ranking corporate officer in charge of compliance for the CS Affiliated QPAM.

Department's Response: The Department is making the requested revisions.

Credit Suisse Technical Corrections Request

In addition to the substantive comments above, Credit Suisse requested that certain technical clarifications be made to the proposed exemption. The Department's responses are described below.

Technical Correction Request 1. Section I(h)(1)(iv) provides: "Any filings or statements made by the CS Affiliated QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of, or in relation to Covered Plans are materially accurate and complete, to the best of such QPAM's knowledge at that time...."

Credit Suisse requests that the Department strike the phrase "in relation to Covered Plans" in Section (I) (h) (1) (iv). Section (I) (h) (1) (v) includes "communications with such regulators with respect to Covered Plans," which encompasses all communications that would potentially be covered by Section I(h) (1) (iv). Because a similar requirement is included in both subsections, the assumption is that a different meaning is intended.

Department's Response: The Department is not making the requested revision. The phrase "in relation to Covered Plans" is sufficiently clear such that the requested revision is not warranted.

Technical Correction Request 2. Section I(i) (5) (i) provides, in part, that "the Audit Report must include the auditor's specific determinations regarding the adequacy of the CS Affiliated QPAM's Policies and Training; the CS Affiliated QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective CS Affiliated QPAM's noncompliance with the written Policies and Training described in Section I(h) above. The CS Affiliated QPAMs must promptly address any noncompliance. The CS Affiliated QPAM must promptly address or prepare a written plan of

action to address any determination as to the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective CS Affiliated QPAM."

Credit Suisse requests that the requirement in Section I(i)(5)(i) to "promptly" address any noncompliance be revised to be "as soon as reasonably possible." This would align the procedure with the provisions for addressing noncompliance relating to the policies, set forth in Section I(h)(2), which require action "as soon as reasonably possible."

Department's Response: The Department is not making the requested revision. The term "promptly" is consistent with the Department's view that addressing any noncompliance must be an important and high priority for a CS Affiliated QPAM.

Technical Correction Request 3. Section I(i)(7) provides, in part: "With respect to each Audit Report, the General Counsel, or one of the three most senior executive officers of the CS Affiliated QPAMs to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this five-year exemption; and that to the best of such officer's knowledge at the time the CS Affiliated QPAM

addressed, corrected, or remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report."

Credit Suisse requests that the Department replace "General Counsel" in Section I(i)(7) with "general counsel," and clarify that the certification of the Audit Report may come from the respective CS Affiliated QPAM's general counsel or one of its three most senior officers.

Department's Response: Given that the criminal misconduct that gave rise to the CSAG Conviction did not occur at any CS Affiliated QPAM, the Department has replaced "General Counsel" with "general counsel." The condition is otherwise clear and reflects the Department's intent as to who must certify the Audit Report.

Technical Correction Request 4. Section I(i)(12) provides: "CSG must notify the Department of a change in the independent auditor no later than two (2) months after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor and CSAG."

Credit Suisse requests that the reference to "CSG" in Section I(i)(12) be revised to read, "CSAG and/or the CS

Affiliated QPAMs."

Department's Response: The Department has revised the exemption consistent with this request.

II. The Morjanoff Letter

a. The Individuals' Hearing Request: The three individuals that submitted the Morjanoff Letter stated that "it is impractical to present all the necessary evidence as comments, but it can be presented at a hearing. Briefly, the reasons are:

1. Recent investigations and court decisions show that CS provided false information for the first exemption.
2. It has declined to correct this false information since then.
3. CS lodged their comment on the last day and was not publicly visible until after public comments had closed.
4. That CS comment requested a relaxation of waiver conditions based on highly dubious assumptions.
5. In essence, this would tend to recreate conditions which could facilitate illegal activity based on the same general scheme as facilitated the criminal activity for which it was convicted.

6. That scheme was based on having a set of 'ineffective rules & policies' for appearances while 'inciting' staff to break those 'rules & policies' for the bank's illegal profit.

7. Quasi 'third parties' were created which pretended to be 'external' to the bank, but in fact operated as if they were a part of the bank.

8. Because thousands of bank employees became accustomed to such extreme double standards, special remediation is required.

9. The public have a right and an urgent need to respond to CS's proposals.

10. Since comments have closed, that would have to be at a public hearing.

11. The sophistication of the bank's deceptions go beyond what can be reasonably expected of the DOL or pension funds to adequately discern.

12. As further proof of the bank's absence of seriousness in correcting its illegal activities, we note that it continues to refuse to respond to formal notifications of crime in the bank sent to top management.

13. A complete analysis of the flaws in CS's submissions is beyond the scope of a comment."

The individuals stated further, "A public hearing is essential: CS's submission contains false statements, omissions & half-truths while the DOL can't be expected to have the expertise to see through CS's schemes."

The individuals attached numerous links to recent court cases and other sources. The individuals added, "The matters raised are not merely matters of law and the factual issues identified are too complex to be adequately explored through the submission of evidence in written (including electronic) form." The individuals concluded, "[s]ince the 'CS Public Hearing' was held on January 15, 2015, a mass of new evidence has become publicly available which dramatically changes the context of the application. Had this knowledge been available previously, it is likely that the previous application would have either been rejected or the waiver substantially modified. Broadly speaking, CS would have known these facts and their non-disclosure represents a serious lack of candour and likely a sufficient breach of requirements to summarily reject the current application."

Department's Response to the Individuals' Hearing

Request: The Department declines to hold a hearing. The

individuals articulated and supported their views in a twelve page comment letter. The individuals had adequate time (a 45 day comment period, plus one additional week) to supplement their letter with all relevant information that was available to them. The individuals did not demonstrate that the issues they raised in the Morjanoff Letter would be more fully or expeditiously explored at a hearing.

Regarding the three individuals' contention that, "[s]ince the 'CS Public Hearing' was held on January 15, 2015, a mass of new evidence has become publicly available which dramatically changes the context of the application[,] " the Department believes the Independent Auditor is best suited to determine whether any newly uncovered evidence affects Credit Suisse's compliance with requirements of the exemption. An essential premise in the Department's determination to grant PTE 2015-14 (and this exemption) is that a qualified independent auditor will annually determine whether each condition of the exemption had been met over the prior year. This includes an in-depth analysis of a wide range of transactions, arrangements, policies, agreements, and procedures relating to the operation of, and services provided by, the Credit Suisse QPAMs. Further, in the Department's view, the factual issues described by the individuals in the

Morjanoff Letter could be fully explored through the submission of evidence in written (including electronic) form, which the individuals failed to submit.

b. The Individuals' Response to the Credit Suisse Comment Letter: In the Morjanoff Letter, the three individuals took issue with many of the revisions that Credit Suisse requested in their response letter. With respect to the Credit Suisse-requested revisions which the Department accepted, the three individuals stated the following:

(a) Regarding Credit Suisse's request to remove the term "related parties" from Section I(f), the three individuals state that Credit Suisse structured their crime so that undefined "quasi-third parties" benefited from and concealed criminal activity. "It is futile to attempt to define related parties while CS uses its creativity in manufacturing them. Details can be provided at a public hearing."

(b) The three individuals state that the exemption should specify the actual affiliates who will receive relief under the exemption. The individuals recommend that relief should be limited to CSAM LLC and CSAM Ltd, "who are the only affiliates that currently manage the assets of ERISA-covered plans on a discretionary

basis." The individuals state that Credit Suisse Securities (USA) LLC "has participated in all manner of illegal, criminal and disreputable activities (as described in previous submissions and subsequently)" and should not be permitted to be QPAM. The individuals state that if relief is available to potentially other affiliates, "they should be named now, and their suitability examined at a public hearing."

Department's Response: The Department does not agree the suitability of future CS Affiliated QPAMs must be examined at a public hearing. This exemption contains a suite of protective conditions, including an in-depth annual audit of, among other things, each CS Affiliated QPAM's transactions, training and policies, as well as each QPAM's compliance with the terms of this exemption. The Department has reviewed prior audits of CS Affiliated QPAMs under PTE 2015-14, and the Department believes the conditions of this exemption are sufficiently protective of Covered Plans with assets managed by current and future QPAMs.

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA or section 4975(c) (2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA, which, among other things, require a fiduciary to discharge its duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a) (1) (B) of ERISA; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of ERISA and section 4975(c) (2) of the Code, the Department makes the following determinations: the exemption is administratively feasible, the exemption is in the interests of affected plans and of their participants and beneficiaries, and the exemption is protective of the rights of participants and

beneficiaries of such plans;

(3) The exemption is supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transaction which is the subject of the exemption.

FIVE-YEAR EXEMPTION

The Department is granting a five-year exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures

set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011).⁹

SECTION I. COVERED TRANSACTIONS

The CS Affiliated QPAMs, as further defined in Section II(d), will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Exemption 84-14 (PTE 84-14),¹⁰ notwithstanding the "Conviction" against CSAG (as further defined in Section II(a)),¹¹ during the Exemption Period, provided that the following conditions are satisfied:

(a) The CS Affiliated QPAMs and the CS Related QPAMs (including their officers, directors, agents other than CSAG, employees of such QPAMs, and CSAG employees described in subparagraph (d) below) did not know of, have reason to know of, or participate in the criminal conduct of CSAG that is the subject of the Conviction. For purposes of this exemption, including paragraph (c) below, "participate in"

⁹ For purposes of this five-year exemption, references to section 406 of Title I of ERISA, unless otherwise specified, should be read to refer as well to the corresponding provisions of section 4975 of the Code.

¹⁰ 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

¹¹ Section I(g) of PTE 84-14 generally provides that "[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of" certain criminal activity therein described.

refers not only to active participation in the criminal conduct of CSAG that is the subject of the Conviction, but also to knowing approval of the criminal conduct, or knowledge of such conduct without taking active steps to prohibit such conduct, including reporting the conduct to such individual's supervisors, and to the Board of Directors.

(b) The CS Affiliated QPAMs and the CS Related QPAMs (including their officers, directors, agents other than CSAG, employees of such QPAMs, and CSAG employees described in subparagraph (d) (3) below) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct of CSAG that is the subject of the Conviction;

(c) The CS Affiliated QPAMs will not employ or knowingly engage any of the individuals that "participated in" the criminal conduct of CSAG that is the subject of the Conviction;

(d) At all times during the Exemption Period, a CS Affiliated QPAM will not use its authority or influence to direct an "investment fund" (as defined in Section VI(b) of PTE 84-14) that is subject to ERISA or the Code and managed by such CS Affiliated QPAM with respect to one or more Covered Plans, to enter into any transaction with CSAG or

to engage CSAG to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption. A CS Affiliated QPAM will not fail this condition solely because:

(1) A CSAG affiliate serves as a local sub-custodian that is selected by an unaffiliated global custodian that, in turn, is selected by someone other than a CS Affiliated QPAM or CS Related QPAM;

(2) CSAG provides only necessary, non-investment, non-fiduciary services that support the operations of CS Affiliated QPAMs, at the CS Affiliated QPAM's own expense, and the Covered Plan is not required to pay any additional fee beyond its agreed-to asset management fee. This exception does not permit CSAG or its branches to provide any service to an investment fund managed by a CS Affiliated QPAM or CS Related QPAM; or

(3) CSAG employees are double-hatted, seconded, supervised, or subject to the control of a CS Affiliated QPAM;

(e) Any failure of a CS Affiliated QPAM to satisfy Section I(g) of PTE 84-14 arose solely from the Conviction;

(f) A CS Affiliated QPAM or a CS Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: further criminal conduct that is the subject of the Conviction; or cause the CS Affiliated QPAM or CS Related QPAM or its affiliates to directly or indirectly profit from the criminal conduct that is the subject of the Conviction;

(g) CSAG will not act as a fiduciary within the meaning of section 3(21)(A)(i) or (iii) of ERISA, or section 4975(e)(3)(A) and (C) of the Code, with respect to ERISA-covered Plan and IRA assets, except it may act as such a fiduciary (1) with respect to employee benefit plans sponsored for its own employees or employees of an affiliate; or (2) in connection with securities lending services of the New York Branch of CSAG. CSAG will not be treated as violating the conditions of the exemption solely because it acted as an investment advice fiduciary within the meaning of section 3(21)(A)(ii) of ERISA or section 4975(e)(3)(B) of the Code;

(h) (1) Prior to May 21, 2020, a CS Affiliated QPAM may continue to maintain, follow and implement the policies described in Section I(h)(1) of PTE 2015-14. Otherwise,

each CS Affiliated QPAM must maintain, adjust (to the extent necessary), implement, and follow the written policies and procedures described below (the Policies). Notwithstanding the preceding sentence, a CS Affiliated QPAM may not engage in any transaction or arrangement described in Section I(d)(1) through (3) of this exemption prior to the date the Policies below have been developed, implemented and followed.

The Policies must require and be reasonably designed to ensure that:

(i) The asset management decisions of the CS Affiliated QPAMs are conducted independently of CSAG's corporate management and business activities, and without considering any fee a CS-related local sub-custodian may receive from those decisions. This condition does not preclude a CS Affiliated QPAM from receiving publicly available research and other widely available information from a CSAG affiliate;

(ii) The CS Affiliated QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, in each case, as applicable, with respect to each Covered Plan, and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans;

(iii) The CS Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by the CS Affiliated QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of, or in relation to Covered Plans are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) To the best of its knowledge at the time, the CS Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans, or make material misrepresentations or omit material information in its communications with Covered Plans; and

(vi) The CS Affiliated QPAM complies with the terms of this five-year exemption, and CSAG complies with the terms of Section I(d) (2);

(2) Any violation of, or failure to comply with, an item in subparagraphs (h) (1) (ii) through (vi) of this section, is corrected as soon as reasonably possible upon discovery, or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any

such violation or compliance failure not so corrected is reported, upon discovery of such failure to so correct, in writing, to the head of Compliance and the general counsel (or their functional equivalent) of the relevant CS Affiliated QPAM, and the independent auditor responsible for reviewing compliance with the Policies. A CS Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this paragraph (2);

(3) Each CS Affiliated QPAM must maintain, adjust (to the extent necessary), and implement a program of training (the Training), conducted at least annually, for all relevant CS Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must:

(i) At a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this

five-year exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing; and

(ii) Be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code;

(i) (1) Each CS Affiliated QPAM submits to three audits, conducted by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and each CS Affiliated QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. The first audit must cover the 24 month period that begins on November 21, 2019. The second audit must cover the 24 month period that begins on November 21, 2021, and the third audit must cover the 12 month period that begins on November 21, 2023. Each audit must be completed no later than six (6) months after the period to which the audit applies;¹²

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and only to the extent such disclosure is

¹² Periods prior to November 21, 2019 must be audited consistent with PTE 2015-14.

not prevented by state or federal statute, or involves communications subject to attorney client privilege, each CS Affiliated QPAM and, if applicable, CSAG, will grant the auditor unconditional access to its business, including, but not limited to: its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access is limited to information relevant to the auditor's objectives, as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether each CS Affiliated QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this five-year exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each CS Affiliated QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test a sample of: (1) each CS Affiliated QPAM's transactions involving Covered Plans; (2) each CS Affiliated QPAM's transactions involving CSAG affiliates that serve as a local sub-custodian. The samples must be sufficient in size and nature to afford the auditor a

reasonable basis to determine the QPAM's operational compliance with the Policies and Training;

(5) For each audit, on or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to CSAG and the CS Affiliated QPAMs to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The auditor, at its discretion, may issue a single consolidated Audit Report that covers all the CS Affiliated QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of the CS Affiliated QPAM's Policies and Training; the CS Affiliated QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective CS Affiliated QPAM's noncompliance with the written Policies and Training described in Section I(h) above. The CS Affiliated QPAMs must promptly address any noncompliance. The CS Affiliated QPAM must promptly address or prepare a written plan of action to address any determination as to the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the

respective CS Affiliated QPAM. Any action taken or the plan of action to be taken by the respective CS Affiliated QPAM must be included in an addendum to the Audit Report (such addendum must be completed prior to the certification described in Section I(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time of submission of the Audit Report, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that the respective CS Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a CS Affiliated QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular CS Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Annual Exemption Report created by the compliance officer (the Compliance Officer), as described in Section I(m) below, as the basis for the auditor's conclusions in lieu

of independent determinations and testing performed by the auditor as required by Section I(i) (3) and (4) above; and

(ii) The adequacy of the Annual Exemption Review described in Section I(m);

(6) The auditor must notify the respective CS Affiliated QPAMs of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to each Audit Report, the general counsel, or one of the three most senior executive officers of the CS Affiliated QPAMs to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this five-year exemption; that, to the best of such officer's knowledge at the time, the CS Affiliated QPAM addressed, corrected, or remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. Such certification must also include the signatory's determination that, to the best of the officer's knowledge at the time, the Policies and Training in effect at the time of signing are adequate to ensure

compliance with the conditions of this exemption and the applicable provisions of ERISA and the Code;

(8) A copy of the Audit Report must be provided to CSAG's Board of Directors and to either the Risk Committee or the Audit Committee; and a senior executive officer at either the Risk Committee or the Conduct and Financial Crime Control Committee must review the Audit Report for each CS Affiliated QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each CS Affiliated QPAM must provide its certified Audit Report, by regular mail to: the Department's Office of Exemption Determinations (OED), 200 Constitution Avenue, NW, Suite 400, Washington DC 20210, or by private carrier to: 122 C Street, NW, Suite 400, Washington, DC 20001-2109. The delivery must take place no more than 45 days following the completion of the Audit Report. The Audit Report will be part of the public record regarding this five-year exemption. Furthermore, each CS Affiliated QPAM must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Any engagement agreement with an auditor to perform the audit required by this exemption must be submitted to OED no later than two (2) months after the execution of the engagement agreement;

(11) The auditor must provide the Department, upon request, for inspection and review, access to all of the workpapers created and used in connection with the audit, provided the access and inspection are otherwise permitted by law; and

(12) CSAG and/or the CS Affiliated QPAMs must notify the Department of a change in the independent auditor no later than two (2) months after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor and CSAG and/or the CS Affiliated QPAMs;

(j) As of the effective date of this five-year exemption, with respect to any arrangement, agreement, or contract between a CS Affiliated QPAM and a Covered Plan, each CS Affiliated QPAM agrees and warrants to Covered Plans:

(1) To comply with ERISA and the Code, as applicable with respect to the Covered Plan; to refrain from engaging in prohibited transactions that are not otherwise exempt

(and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA with respect to each such ERISA-covered plan and IRA to the extent that section 404 is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from a CS Affiliated QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by a CS Affiliated QPAM; or any claim arising out of the failure of such CS Affiliated QPAMs to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I(g) of PTE 84-14 other than the Conviction. This condition only applies to actual losses caused by the CS Affiliated QPAM's violations;

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the CS Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to restrict the ability of the Covered Plan to terminate or withdraw from its arrangement with the CS Affiliated QPAM, with respect to any investment in a separately-managed account or pooled fund subject to ERISA

and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangement involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally-recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that

such fees are applied consistently and in like manner to all such investors;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the CS Affiliated QPAMs for a violation of the agreement's terms. To the extent consistent with section 410 of ERISA, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of CSAG and its affiliates, or damages arising outside the control of the CS Affiliated QPAM; and

(7) Within four (4) months of the effective date of this five-year exemption, each CS Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For Covered Plans that enter into a written asset or investment management agreement with a CS Affiliated QPAM on or after November 21, 2019, the CS Affiliated QPAM must agree to its obligations under this Section I(j) in an updated investment management agreement between the CS Affiliated QPAM and such clients or other written contractual agreement. Notwithstanding the above, a CS Affiliated QPAM will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement. This condition will be

deemed met for each Covered Plan that received a notice pursuant to PTE 2015-14 that meets the terms of this condition.

(k) Notice to Covered Plan Clients. Each CS Affiliated QPAM provides a notice of the five-year exemption, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84-14, to each sponsor and beneficial owner of a Covered Plan that entered into a written asset or investment management agreement with a CS Affiliated QPAM, or the sponsor of an investment fund in any case where a CS Affiliated QPAM acts as a sub-adviser to the investment fund in which such ERISA-covered plan and IRA invests. The notice, Summary and Statement must be provided prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the CS Affiliated QPAM. The clients must receive a Federal Register copy of the notice of final five-year exemption within sixty (60) days of the effective date of this exemption. The notice may be delivered electronically (including by an email that has a link to the five-year exemption).

(l) The CS Affiliated QPAM must comply with each condition of PTE 84-14, as amended, with the sole exception of the violation of Section I(g) of PTE 84-14 that is attributable to the Conviction. If, during the Exemption Period, an entity within the Credit Suisse corporate structure is convicted of a crime described in Section I(g) of PTE 84-14, relief in this exemption would terminate immediately;

(m) (1) By May 20, 2020, each CS Affiliated QPAM designates a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. For purposes of this condition (m), each relevant line of business within a CS Affiliated QPAM may designate its own compliance officer. The Compliance Officer must conduct an annual review for each twelve month period, beginning on November 21, 2019, (the Annual Exemption Review) to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the

regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer must have a direct reporting line to the highest ranking corporate officer in charge of compliance for the applicable CS Affiliated QPAM.

(2) With respect to each Annual Exemption Review, the following conditions must be met:

(i) The Annual Exemption Review includes a review of the CS Affiliated QPAMs compliance with and effectiveness of the Policies and Training and of the following: any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; the most recent audit report issued pursuant to this exemption or PTE 2015-14; any material change in the relevant business activities of the CS Affiliated QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the CS Affiliated QPAMs;

(ii) The Compliance Officer prepares a written report for each Annual Exemption Review (each, an Annual Exemption Report) that (A) summarizes his or her material activities during the preceding year; (B) sets forth any

instance of noncompliance discovered during the preceding year, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;

(iii) In each Annual Exemption Report, the Compliance Officer must certify in writing that to the best of his or her knowledge at the time: (A) the report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the preceding year and any related correction taken to date have been identified in the Annual Exemption Report; and (D) the CS Affiliated QPAMs have complied with the Policies and Training, and/or corrected (or are correcting) any known instances of noncompliance in accordance with Section I(h) above;

(iv) Each Annual Exemption Report must be provided to appropriate corporate officers of CSAG and each CS Affiliated QPAM to which such report relates; the head of

Compliance and the general counsel (or their functional equivalent) of the relevant CS Affiliated QPAM; and must be made unconditionally available to the independent auditor described in Section I(i) above;

(v) Each Annual Exemption Review, including the Compliance Officer's written Annual Exemption Report, must be completed within three (3) months following the end of the period to which it relates;

(n) Each CS Affiliated QPAM will maintain records necessary to demonstrate that the conditions of this five-year exemption have been met, for six (6) years following the date of any transaction for which the CS Affiliated QPAM relies upon the relief in the five-year exemption;

(o) During the Exemption Period, CSAG: (1) immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) that Credit Suisse Group AG or CSAG or any affiliate (as defined in Section VI(d) of PTE 84-14) enters into with the U.S Department of Justice, to the extent such DPA or NPA relates to the conduct described in Section I(g) of PTE 84-14 or section 411 of ERISA; and (2) immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or the conduct and allegations that led to the agreement;

(p) Within 60 days of the effective date of the five-year exemption, each CS Affiliated QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of the CS Affiliated QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed.¹³ With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan; and

(q) A CS Affiliated QPAM will not fail to meet the terms of this five-year exemption, solely because a different CS Affiliated QPAM fails to satisfy a condition for relief under this five-year exemption described in Sections I(c), (d), (h), (i), (j), (k), (l), (n), and (p); or, if the independent auditor described in Section I(i)

¹³ In the event the Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate.

fails a provision of the exemption other than the requirement described in Section I(i)(11), provided that such failure did not result from any actions or inactions of CSAG or its affiliates.

SECTION II. DEFINITIONS

(a) The term "Conviction" means the judgment of conviction against CSAG for one count of conspiracy to violate section 7206(2) of the Internal Revenue Code in violation of Title 18, United States Code, Section 371, that was entered in the District Court for the Eastern District of Virginia in Case Number 1:14-cr-188-RBS, on November 21, 2014.

(b) The term "Covered Plan" means a plan subject to Part 4 of Title I of ERISA (an "ERISA-covered plan") or a plan subject to section 4975 of the Code (an "IRA"), in each case, with respect to which a CS Affiliated QPAM relies on PTE 84-14, or with respect to which a CS Affiliated QPAM (or any CSAG affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84-14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the CS Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into a contract,

arrangement, or agreement with the ERISA-covered plan or IRA.

(c) The term "CSAG" means Credit Suisse AG.

(d) The term "CS Affiliated QPAM" means a "qualified professional asset manager" (as defined in Section VI(a) of PTE 84-14) that relies on the relief provided by PTE 84-14 and with respect to which CSAG is a current or future "affiliate" (as defined in Section VI(d) of PTE 84-14), but is not a CS Related QPAM. The term "CS Affiliated QPAM" excludes the parent entity, CSAG.

(e) The term "CS Related QPAM" means any current or future "qualified professional asset manager" (as defined in Section VI(a) of PTE 84-14) that relies on the relief provided by PTE 84-14, and with respect to which CSAG owns a direct or indirect five (5) percent or more interest, but with respect to which CSAG is not an "affiliate" (as defined in section VI(d)(1) of PTE 84-14).

(f) The term "Exemption Period" means the period from November 21, 2019 through November 20, 2024.

Effective Date: This five-year exemption will be in effect for five years beginning on the expiration of PTE 2015-14.

FOR FURTHER INFORMATION CONTACT: Mrs. Blessed
Chuksorji-Keefe of the Department, telephone (202) 693-
8567. (This is not a toll-free number.)

Signed at Washington, DC, this 8th day of November, 2019.

Lyssa Hall,

Director,

Office of Exemption Determinations,

Employee Benefits Security Administration,

U.S. Department Of Labor.

[FR Doc. 2019-24750 Filed: 11/13/2019 8:45 am; Publication Date: 11/14/2019]